

BORDERLESS COMMERCE; LOCAL CONSUMER PROTECTION

Since Hunters Have Learned To Shoot Without Missing, Birds Must
Learn to Fly Without Perching

How Can Protection Match Proliferation?

- The face of global commerce is changing
- Technology is continuing what it does best - Disruption
- Trade has now been redefined. It started from barter (people), but now mostly characterized as between Nations
- Commerce and transactions, or perhaps, even interactions appear more nimble and accurate
- Question is whether the general rubric of protection is sufficiently prepared for the current proliferation

How Can Protection Match Proliferation? Two Words; Opposite Intended Meanings

- Consumer and protection by nature and practice have limiting features.
- Commerce and electronic by nature and practice have expanding features.
- Consumer and protection narrowly define both the object and the space.
- Commerce and electronic broadly expand the object and the space.
- A Consumer, as imprecise, usually refers to some clarity about a person and place.
- Protection usually connotes law, enforcement, rights and rules which by nature and default are territorial and localized.

Protection Must Adopt the Creativity And Disruptiveness Of Proliferation

- Protection professionals must understand the business and nature of proliferation.
- Protectors must innovate ways to break the protection mold that constricts.
- Ecommerce is somewhat eliminating the traditional clarity in identities of parties.
- This potentially, obliterates the age long methods of assessing competition, or
- Determining exactly who owes the most proximate duty of care in consumer protection.

Proliferation: Not Just Global, But Also Local

- Beyond taking business to cyberspace, ecommerce introduces silent and unseen parties.
- Is there an obfuscation that promotes commerce; but prevents accountability/responsibility?
- Aggregation and facilitation (Expedia, Wakanow, Amazon, Alibaba, Jumia, Payment Systems)
- How does aggregation impact competition?
- How does facilitation impact choice?
- Aggregators and facilitators; agents or independent contractors?
- Question of subject matter jurisdiction- is there privity?
- Question of procedural jurisdiction- legal jurisdiction over foreign entities.
- So proliferation is as much as it is about space/place, as it is about parties.

Protection Against Protectionism

- Protection practitioners must recognize that protectionism now undermines protection.
- Brand or national origin protectionism weakens overall consumer protection.
- Trade redefined, must not impede trade originally defined.
- Jurisdictional protectionism is also a threat to overall consumer protection.
- Companies are sophisticated enough to exploit the law and systems without violating the law

SOLUTION: Innovation, Uniformity, Collaboration

- Adopt key regulations about jurisdiction of regulators over ecommerce operators.
- Adopt some level of uniformity in regulations, including mutual regulations that open each others' space and reach.
- Commit to mutual understandings about information sharing.
- Leverage on strengths of each others' regulations and regulatory processes/environment.
- Cooperate to ensure multinationals cannot isolate consumer protection problems, the “different entity” defense or strategy.

SOLUTION: Innovation, Uniformity, Collaboration

- Comparative judicial advantages; (interesting unique environmental peculiarities)
- Using diverse cross-border regulatory, administrative, judicial tools
- 360 degree approach is vital because, just like proliferation has occurred, so has movement of people for the same purpose.
- Best Example: **We Are All Here!**
- A coordinated and global collaborative approach is the real solution to robust protection, and maintaining standards, as well as promoting competition and sustaining businesses with best practices.

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THANK YOU